



**Commissioner of Investigations & Enforcement v Baus Optical Company Limited (Tax Appeal E088 of 2024) [2025] KEHC 11652 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11652 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**TAX APPEAL E088 OF 2024**  
**AA VISRAM, J**  
**JULY 31, 2025**

**BETWEEN**

**COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT ..... APPELLANT**

**AND**

**BAUS OPTICAL COMPANY LIMITED ..... RESPONDENT**

*(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 23rd February 2024 in Tax Appeal No.1563 of 2022)*

**JUDGMENT**

**Introduction and Background**

1. This is an appeal by the Commissioner of Investigations and Enforcement (“the Commissioner”) challenging the decision of the Tax Appeals Tribunal (“the Tribunal”) delivered on 23<sup>rd</sup> February, 2024. The Tribunal allowed the Respondent’s appeal and set aside the Commissioner’s objection decision dated 8<sup>th</sup> November, 2022 (“the Objection Decision”) on the basis that it was issued outside the statutory timeline under section 51(11) of the *Tax Procedures Act* (TPA).
2. The Commissioner’s Memorandum of Appeal dated 12<sup>th</sup> April, 2024, raises a single ground: that the Tribunal erred in finding that the Objection Decision was late, thus deeming the taxpayer’s objection allowed by law. The Commissioner contends that the Tribunal strayed from the parties’ pleadings and evidence and effectively rewrote the rules of tax dispute resolution.
3. The Respondent filed a Statement of Facts dated 10<sup>th</sup> May, 2024, opposing the appeal. Both parties filed written submissions which I have considered.



## Background to the Dispute

4. On 18<sup>th</sup> August, 2022, the Commissioner issued VAT and Income Tax assessments to the Respondent amounting to Kshs. 624,716,799/-. The Respondent lodged an objection on 6<sup>th</sup> September, 2022. On 8<sup>th</sup> November, 2022, the Commissioner issued the Objection Decision upholding the assessments.
5. Dissatisfied, the Respondent appealed to the Tribunal which found that the Objection Decision was issued beyond the 60-day statutory period prescribed by Section 51(11) of the TPA. Consequently, the Tribunal deemed the objection allowed by operation of law.

## Commissioner's Submissions

6. The Commissioner submits that the Tribunal introduced and determined an issue not pleaded by the Respondent, namely, the timeliness of the Objection Decision, thereby straying from the pleadings. It argues that none of the fifteen grounds of appeal before the Tribunal raised this issue, and the Tribunal's judgment was based on a "fictitious account of events" never advanced by either party.
7. It is contended that the Tribunal's suo moto consideration of this issue violated the principle that parties are bound by their pleadings and deprived the Commissioner of an opportunity to be heard.
8. The Commissioner relies on Section 56(1) of the TPA and Section 30 of the *Tax Appeals Tribunal Act*, which place the burden of proof on the taxpayer. It is argued that it was contrary to law for the Tribunal to raise and determine a new issue to the detriment of the Commissioner.
9. The Commissioner maintains that the objection was received on 12<sup>th</sup> September, 2022, and thus the Objection Decision was timely. It faults the Tribunal for failing to consider this fact.

## Respondent's Submissions

10. The Respondent supports the Tribunal's decision, asserting that the Objection Decision was issued three days late, rendering it invalid under Section 51(11) of the TPA, which mandates that: -

The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection, failure to which the objection shall be deemed to be allowed.
11. The Respondent cites *Republic v Kenya Revenue Authority Ex Parte M-Kopa Kenya Limited* [2018] KEHC 9059 (KLR), where the court held that failure to determine an objection within the statutory period results in the objection being allowed by law.
12. Relying on *Odd Jobs v Mubia* [1970] EA 476 and *Vyas Industries v Diocese of Meru* [1976] KECA 18 (KLR), the Respondent argues that a court may base its decision on an unpleaded issue if it arises during trial and is left for determination. It submits that the issue of statutory timelines was evident from the pleadings and undisputed by the Commissioner.

## Analysis and Determination

13. This Court's appellate jurisdiction is confined to questions of law under Section 56(2) of the TPA. As stated in *John Munuve Mati v Returning Officer Mwingi North Constituency and Others* [2018] KEHC 8738 (KLR), an appellate court may not substitute its own findings of fact for those of the Tribunal.
14. The issues for determination are: -



- i. Whether the Tribunal was entitled to raise and determine the issue of statutory timelines suo moto.
- ii. Whether the Objection Decision was issued within the statutory period.
- iii. Whether the Tribunal's judgment was proper in law.

### **Deviation from Pleadings**

15. It is undisputed that neither party explicitly raised the issue of statutory timelines. Nonetheless, this issue goes to jurisdiction, as compliance with Section 51(11) of the TPA determines whether an Objection Decision is valid. A tribunal or court has inherent power to address jurisdictional questions even if not pleaded.
16. In *Commissioner of Investigations and Enforcement v Kingstone Construction Company Limited* [2025] KEHC 3248 (KLR), the Court held: -

“The time limits under section 51(11) of the TPA are mandatory. A tribunal has the mandate to reference and interpret them. A party who fails to adhere to statutory dictates cannot complain when the court applies the law against its position. Courts and tribunals are not expected to close their eyes to the law merely because parties did not address it.”
17. I therefore find that the Tribunal acted within its mandate in raising and determining the issue of statutory timelines suo moto. This does not infringe on the Commissioner's rights as the matter concerned jurisdiction and application of the law.

### **Validity of the Objection Decision**

18. The objection was lodged on 6<sup>th</sup> September, 2022, and the Objection Decision issued on 8<sup>th</sup> November, 2022. The Commissioner asserts that receipt was on 12<sup>th</sup> September, 2022, but did not produce conclusive evidence (such as a stamped copy or acknowledged email) to support this.
19. I have reviewed the record and note that the date stamp on the objection is illegible, making it impossible to ascertain with certainty the actual date of receipt. The Tribunal, as the court of first instance, evaluated this factual issue and concluded that the decision was issued outside the statutory period. As this is a finding of fact, and this Court's jurisdiction is limited to legal issues, I defer to the Tribunal's determination.

### **Propriety of the Tribunal's Judgment**

20. Having found that the Objection Decision was made out of time and thus invalid, the Tribunal correctly applied Section 51(11) of the TPA in deeming the objection allowed. The judgment was therefore proper in law.

### **Conclusion and Orders**

21. For the foregoing reasons, I find no merit in the appeal. It is accordingly dismissed.
22. There shall be no order as to costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF JULY, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**



In the presence of;

Court Assistant: Sakina

.....for Appellant

.....for Respondent

